
THE CORPORATION JOURNAL

(REGISTERED U. S. PAT. OFFICE)

VOL. VII, No. 156

JUNE, 1927

PAGES 409-432

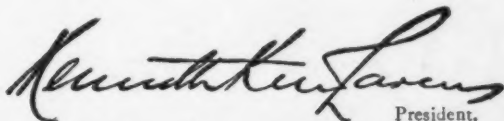
Published by

THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.

The newest of The Corporation Trust Company's services—The Corporation Tax Service, State and Local, covers every state and local tax payable by ordinary business corporations, in every state. It is kept constantly up to date. Each subscriber may select the states, and in each state the city, which he desires to have covered in his service and the subscription price is based on the number so selected. Attorneys for corporations, corporation officials, accountants and others interested in these matters will find this service invaluable. Further information may be had at any of our offices.

The Corporation Journal, as usual will not be published in July, August, and September. The next number will contain all matter collected since the date of this issue.



President.

Board of Tax Appeals Decisions

The Federal Tax Service of The Corporation Trust Company is the only place in which reports of Board of Tax Appeals decisions are always up to date and always to be found without difficulty or bother no matter which method of looking for them is used.

Cumulative Index

①

Any Board of Tax Appeals decision affecting any tax question you are investigating, and not merely duplicating the effect of some previous decision, will be called to your attention by the Cumulative Index and directions given you as to where in the Service the full report may be read.

Finder by B. T. A. Reports Citation

②

Any decision of the Board of Tax Appeals of which the official reporter's citation is known may be located at once by this Finder without consultation of any other index, supplement or check list.

Finder by Docket Number

③

Any decision of the Board of Tax Appeals of which the Docket Number is known may be located at once by this Finder without consultation of any other index, supplement or check list.

Finder by Petitioner's Name

④

Any decision of the Board of Tax Appeals of which the Petitioner's name is known may be located at once by this Finder without consultation of any other index, supplement or check list.

THE CORPORATION JOURNAL

Edited by John H. Sears of the New York Bar

VOL. VII, No. 156

JUNE 1927

PAGES 409-432

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

THE CORPORATION TRUST COMPANY

120 Broadway, New York

*Affiliated with***The Corporation Trust Company System**

15 Exchange Place, Jersey City

Combined Assets a Million Dollars

Chicago, 112 W. Adams Street
 Pittsburgh, Oliver Bldg.
 Washington, Colorado Bldg.
 Los Angeles, Security Bldg.
 Cleveland, Union Trust Bldg.
 Kansas City, Scarritt Bldg.
 San Francisco, Mills Bldg.
 Portland, Me., 281 St. John St.

Philadelphia, Land Title Bldg.
 Boston, 63 State Street
 (Corporation Registration Co.)
 St. Louis, Fed. Com. Trust Bldg.
 Detroit, Dime Sav. Bank Bldg.
 Minneapolis, Security Bldg.
 Albany Agency, 25 Washington Ave.
 Buffalo Agency, Ellicott Sq. Bldg.

WILMINGTON, DELAWARE
 (The Corporation Trust Co. of America)

Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

—files for attorneys all papers, holds incorporators' meetings, and performs all other steps necessary for incorporation or qualification in any jurisdiction;

—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

—keeps counsel informed of all state taxes to be paid and reports to be filed by his client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation;

Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

—acts as Transfer or Co-Transfer Agent or Registrar for the securities of corporations;

—acts as Trustee, Custodian of Securities, Escrow Depository, or Depository for Reorganization Committees;

—naturally (as a result of the great organization and facilities thus maintained) and necessarily (because of the important functions it performs for lawyers) keeps constantly informed of the official matters—legislation, court decisions, and the rulings and regulations of various governmental bodies—which relate to taxation, transfers of securities, regulation of business activities, etc., and furnishes such information, where desired, on an annual basis in the form of the following Services:—

The Federal Tax Service
 Corporation Tax Service, State and Local
 New York Tax Service
 Congressional Legislative Service
 Federal Reserve Act Service
 Supreme Court Service
 Federal Trade Commission Service
 Stock Transfer Guide and Service

Amendments to Illinois General Corporation Act

The general corporation act of Illinois has been amended affecting initial fees and annual franchise taxes payable by domestic and foreign corporations. These amendments were necessitated by the decision of the Illinois Supreme Court in the case of O'Gara Coal Co. v. Emmerson, Secretary of State. Both domestic and foreign corporations benefit under these amendments, principally because fees upon organization or qualification and annual taxes are now based upon issued rather than authorized capital.

The status of foreign corporations applying for admission to transact business in Illinois or conducting business therein has not been otherwise affected by these amendments. In fact, the process of qualification or maintenance has been simplified and made less expensive and the conditions remain unchanged which have heretofore guided counsel in the determination in given cases to select laws of a foreign state for incorporation.

As to domestic corporations the rate of the initial fee and the annual franchise tax remains unchanged, namely, $1/20$ of 1%, but this rate is now based upon the *issued* stock or stock proposed to be issued at once, and shares of no par value are taken and considered for the purpose of fixing the fee or tax as of the amount of the consideration received or to be received by the corporation therefor.

As to foreign corporations, the rate of the fees upon admission and the annual franchise tax are the same as upon a domestic corporation, but are based only upon the *proportion* of the *issued* capital stock represented by business transacted and property located in Illinois. Stock without par value is valued for purposes of taxation at the amount of the consideration received or to be received therefor which must be at least five dollars per share and not more than one hundred dollars.

Foreign corporations, as well as domestic, are now required to report new issues of stock within 30 days, and the fee of $1/20$ of 1% upon the proportion of such issue represented in Illinois must accompany the certificate of such issue. The franchise tax to be paid by domestic and foreign corporations having no property located in the state and transacting no business in the state is now based on the *issued*, instead of authorized capital stock. Both tangible and intangible property may now be considered in determining the proportion of capital stock represented in Illinois. A filing fee of twenty dollars must also accompany each stock statement. The fee heretofore was one dollar. A bill is now in the legislature to re-amend the act reducing this fee to the former rate. Pamphlet copies of these amendments may be obtained at any office of The Corporation Trust Company.

Domestic Corporations

California.

Creditors may invoke conduct of parties to void subscription contract. In California, while estoppel is unavailable as a plea in an action between parties to a void stock subscription contract, this rule has an exception that permits innocent creditors to invoke the conduct of the parties to the void contract as an estoppel and barrier against their asserting the invalidity of their contract, so as to defeat just claims of innocent creditors. In the instant case the United States District Court (Southern District, California) further says that the conduct and actions of the stockholder in making the subscription agreement under which he purchased the stock and paid for it partly in cash and partly with promissory notes that were presently discounted by the corporation for cash, together with his acceptance of stock certificates issued from the company's books, and his acceptance of the position and salary of superintendent of the company's factory for several months, and the further acceptance of the office of president and director of the corporation, all under the agreement which he continued to perform without objection, should and do estop him from repudiating his agreement to the prejudice of innocent third persons, and from claiming funds which induced innocent creditors to deal with the corporation and to part with value. To allow the stockholder's claim for the return of his money as against the just claims of the general creditors of the corporation, who were misled and deceived by his voluntary conduct, would be inequitable, unconscionable, unjust, and legally unwarrantable. In re American Aluminum Metal Products Co., 15 F. (2d) 234. Turnbull, Heffron & Kelley, of Los Angeles, for petitioning creditors. W. T. Craig, of Los Angeles, for trustee. Wood, Janeway & Pratt, of Los Angeles, for claimant Dempsey.

Kansas.

Forfeiture of charter on failure to file annual report. Where a corporation fails to pay a prescribed fee and to file an annual report as required by statute within the time fixed by the Legislature, the omission operates as a forfeiture of its charter and ends its existence when the forfeiture is declared by the state charter board. The order declaring a forfeiture for noncompliance of the requirements in the statute named is legislative and administrative in character, and the notice necessary to a judicial proceeding is not essential to the validity of the order of forfeiture. The Supreme Court of Kansas further says that upon the forfeiture of the charter of a corporation, actions by or against it are abated, and no valid proceedings can be taken therein until a revivor is had in the manner provided by law and that where no revivor of a defunct corporation has been granted, a receiver appointed by another court in an action brought against the corporation is not entitled to be substituted as plaintiff upon his application

made after the existence of the corporation has terminated. *A. R. Young Const. Co. v. Dunne et al.*, 254 Pac. 323. Charles M. Miller, of Kansas City, Mo., and C. H. Brooks, Willard Brooks, and Howard T. Fleeson, all of Wichita, for appellant. Chester I. Long, Austin M. Cowan, Claude I. Depew, Jas. G. Norton, W. E. Stanley, Thomas E. Elcock, and James G. Martin, all of Wichita, for appellees.

Maryland.

Necessity for keeping stock ledger in state. By Chapter 581, Laws of 1927, effective June 1, 1927, Section 85 of Article 23 is amended so as to dispense with the necessity of keeping an original or duplicate stock ledger at the principal office in the state if such original or duplicate stock ledger is kept "at any other office or agency of the corporation in such city or town as may be specified in the by-laws." It will of course be necessary for each corporation to amend its by-laws so as to specify the city or town in which such office or agency is located. Except in cases in which there is an inconsistent provision at present in the by-laws of the corporation, this may be done by an additional or supplementary by-law, adopted by the board of directors as provided by Section 15 if the by-laws authorize the board to adopt additional or supplementary by-laws.

Michigan.

Stockholder entitled to recover dividend from officer and director who purchased shares with knowledge of special facts as to declaration of dividend. The Supreme Court of Michigan, in a recent decision involving a sale of stock and dividend declared thereon, upholds an instruction of the lower court to the effect that even if it were found that the seller was not the owner of the stock when the dividend was declared, and that the title had in fact passed, he could still recover the dividend, if the purchaser, an officer of the corporation remained silent and failed to inform the seller or his agent of the existence of exceptional facts and special circumstances not appearing upon the books of the corporation, which would enhance the value of the stock. The facts concealed in the instant case were that the corporation was about to sell a portion of its real estate and that a dividend was to be declared. Such sale was in fact made and the dividend subsequently declared. *Gammon v. Dain et al.*, 212 N. W. 957. Clarence A. Cameron and Farley & Selby, all of Flint, for appellants. Gault & Parker, of Flint, for appellee.

Minnesota.

Stockholder of old corporation signing articles of new corporation deemed to have subscribed to stock in new company. Where it is voted by the stockholders of an existing corporation to organize a new corporation for the purpose of taking over the stock of the old corporation, the stockholders thereupon signing articles of incorporation in the new company is equivalent to a subscription for stock in the new company. The Supreme Court of Minnesota further says that

a stockholder attending such a stockholders' meeting and participating therein, and immediately thereafter signing the articles of incorporation in the new company, is deemed to have subscribed for the amount of stock which he held in the old, which constitutes him a stockholder in the new. *Zander v. Schuneman*, 212 N. W. 587. Constant Larson, of Alexandria, for appellant. Grimes & Maxwell, of Minneapolis, for respondent.

Oklahoma.

Holder of so-called preferred stock certificate held to be creditor of corporation. Where one provision of a so-called certificate of preferred stock constitutes an unconditional and absolute obligation of the corporation to pay the par value thereof, and the other provisions of the instrument, construing the whole instrument together, do not restrict, qualify, or condition such promise, the holder is a creditor rather than a stockholder of the corporation, notwithstanding certain provisions of the instrument are appropriate to a certificate of preferred stock proper. In addition to the above The Supreme Court of Oklahoma says that what a certificate of preferred stock, so called, is, as evidenced by its terms, and not what the parties designate it, must determine its character. Whether the holder of such instrument be a preferred stockholder or a creditor of the corporation must be determined by the facts in the particular case under the rules for construing contracts. So-called stock may be issued in such a way and under such terms as to make the transaction strictly a borrowing, and the so-called certificate of stock an evidence of indebtedness, in which case the holder will become a creditor rather than a stockholder of the corporation. *Best v. Oklahoma Mill Co., et al.*, 253 Pac. 1005. *Lydick & McPherrin, Morrison & Morrison, and M. E. Jordan*, all of Oklahoma City, for plaintiff in error. *Boynton & Reilley, of Kingfisher, and James E. Goodrich, H. G. Leedy, and I. P. Ryland*, all of Kansas City, Mo., for defendants in error.

Oregon.

Subscription to stock prior to formation of corporation. The United States Circuit Court of Appeals (Ninth Circuit) makes the following statement relative to an agreement to subscribe for stock of a corporation to be formed: "Agreements to subscribe for stock of corporations to be formed in the future may assume different forms, with different results. For example, if an individual, acting singly and without co-operation with others, offers to take stock in such a corporation, all the authorities agree that the offer may be rescinded or revoked at any time before the corporation is formed and the offer accepted; this upon the familiar principle that it takes two parties to make a contract, and that, if one is not bound, the other is not, in other words, that a mere unaccepted offer cannot in the nature of things constitute a binding contract. Again, such an agreement may assume a double aspect, as where a number of persons agree to form a corporation and to subscribe to its capital stock. Such an agreement constitutes a contract as between the

subscribers themselves, operative at once, and it likewise constitutes a continuing offer to the proposed corporation, which, upon acceptance, becomes as to each subscriber a contract between him and the corporation. Some of the authorities hold that contracts of the latter class are irrevocable without the consent of all the parties thereto; but there is usually found in such cases some element of estoppel." *Collins v. Morgan Grain Co. Inc.*, 16 F. (2d) 253. James H. Raley, of Pendleton, Richard W. Montague, of Portland, and William I. Brobeck, Herman Phleger, and Maurice E. Harrison, all of San Francisco, Cal., for plaintiff in error. William S. Andrews, of San Francisco, Cal., and Harry L. Raffety, Merwin Rankin, and David C. Pickett, all of Portland, for defendant in error.

Panama.

General corporation law enacted. Advice has been received that there has recently been passed by the Legislature of Panama, a general corporation law, which became effective on April 1, 1927. The law contains many favorable features, some of which are as follows: The articles of incorporation and by-laws may be executed outside of the Republic of Panama; stockholders' and directors' meetings may be held outside the Republic; there are no annual corporation taxes; the incorporation charges are only those charged as notary fees and registration fees; no annual reports need be made, and the corporation may issue any kind of stock, including shares without par value. The above information was supplied by Fabrega & Arias, Attorneys, 15 Central Avenue, Panama, R. P.

Washington.

Repurchase of stock by corporation. While it has been often held that a contract made by a corporation for the repurchase from an original subscriber to its capital stock is against public policy, *ultra vires*, and unenforceable, it has never been held, where the stock agreed to be repurchased had been regularly subscribed and paid for at the time of the organization of the company and had been donated or given to the company by those who had subscribed and paid for it so that the corporation might use the stock for its benefit, that an agreement to repurchase such stock could not be lawfully made by the corporation. When stock, subscribed and fully paid for, is turned back to the corporation, it occupies no different position than any other asset of the corporation which the company has power to sell; and regarding such sale it can make such agreement as the dictates of sound business judgment may demand. The Supreme Court of Washington further says that if this company had sold some other asset, for example, a piece of machinery, with an agreement to repurchase it, there could be no question but what that agreement could be enforced and would not be *ultra vires*. The treasury stock in the instant case differed in no respect from the machinery in the supposi-

tious case. *Simonds v. Noland*. 253 Pac. 638. Rader & Bean, of Walla Walla, for appellant. H. B. Noland, of Walla Walla, for respondent.

Wisconsin.

Order permitting inspection of corporate records in suit must be specific. In this action the question of the right to inspect books and records came up. The Supreme Court of Wisconsin in passing on the point raised says that the application for an order of inspection of books and documents, under the statute should specify with particularity the books and documents desired for inspection, and it should show that they are relevant and pertinent to the defense of the action. "It should be clearly kept in mind that this was not an action on the part of the corporation, or of a stockholder of the corporation, affecting the management or conduct of the corporation, and that the defendant was not seeking an examination of the books and records of the association to protect his interests in the corporation. The examination was solely to get information upon which to defend in an action brought to enforce the written contract. If he desired such information it was his duty to point out in his affidavit the particular records and documents, or portions thereof, that were relevant and pertinent to the action and necessary for him to prepare his answer. The order, when granted, should be upon affidavit of the defendant or his attorney specifying the particular documents to be examined and a showing of relevancy and materiality. The order should fully protect the plaintiff in its rightful custody of its books and records, and in its right to supervise the examination, to the extent that no improper use shall be made of its records, and that none are misplaced, destroyed, or lost. It should further reasonably limit the time in which the examination shall be made." *Northern Wisconsin Co-op. Tobacco Pool v. Oleson*, 211 N. W. 923. Gilbert, Ela, Heilman & Raeder, of Madison, for appellant. Hill, Thomann & Beckwith, of Madison, Clancey, Loverud & Loverud, of Stoughton, and Graves & Gulbrandsen, of Viroqua, for respondent.

Foreign Corporations

Connecticut.

Severe penalties imposed on foreign corporation for failure to comply with law. In Connecticut, "An Act amending an act concerning the failure of a foreign corporation to file a certificate of its charter with the secretary of state," has been passed, effective July 1, 1927 and provides that any person, or any agent, officer or employee of any foreign corporation who shall transact any business within the state for such corporation without the statute being complied with shall be fined not exceeding \$1,000 or imprisoned not exceeding 30 days or both. The act further provides that no action shall be instituted or recovery had

by any such corporation, on any contract, in any of the courts of the state until such corporation shall have complied with the provisions of the statute; and, before any such corporation which shall not have complied with such provisions may institute any action in any of the courts of the state, on any cause of action arising prior to the filing of the certified copy of its charter and amendments thereto, power of attorney and statement provided for in the statute, it shall pay to the secretary, for the use of the state, a license fee of two hundred and fifty dollars.

Illinois.

Illinois statute does not make contracts of unqualified corporations void. The United States Circuit Court of Appeals, (Seventh Circuit), in a recent decision says, that: "Under the Illinois law, a foreign corporation, failing to qualify to do business within the state, is subjected to two penalties: (a) It may be fined; (b) it may not maintain a suit in Illinois state courts. While there are Illinois cases holding that an unqualified foreign corporation's contracts are void, it is quite apparent, from all the authorities in that state, that that is not true, even in Illinois. *Ryerson v. Shaw*, 277 Ill. 524, 530, 115 N. E. 650. In a suit in the state courts, such a corporation whether sued or being sued, must abide by its contract, unless the question of its failure to qualify is raised by the opposite party. The Illinois statute does not make the contracts of such corporations void, and in such cases the federal courts are open to such corporations, both to sue and defend. *David Lupton's Sons v. Auto. Club*, 225 U. S. 489, 32 S. Ct. 711, 56 L. Ed. 1177, Ann. Cas. 1914A, 699; *Kawin & Co. v. Am. Colortype Co.* (C. C. A.) 243 F. 317; *Vitagraph Co. v. Twentieth Century Co.* (C. C.) 157 F. 699." *Bradford v. Indiana Harbor Belt R. Co.*, 16 F. (2d) 836. *C. C. Shirley, of Indianapolis, Ind.*, for plaintiff in error. *Sidney C. Murray, of Chicago*, for defendant in error.

Indiana

Isolated transaction does not constitute "doing business." The question presented in the instant case is whether a foreign corporation for profit, without complying with the Indiana statute with reference to transacting business in Indiana, may become the owner of real estate therein, and protect its title by a suit at law or equity until such times as it may dispose of its holding, such ownership being an isolated transaction, and all the negotiations and trading with respect to it having been had in the state of the corporation's nativity, without any intention of its part to repeat the transaction or to transfer any of its business to Indiana. The Appellate Court of Indiana in holding the foreign corporation not to be "doing business," cites the case of *Lowenmeyer v. National Lumber Co.*, 71 Ind. App. 458, to the effect that where a foreign corporation enters into a single contract, or engages in some other isolated business act within a particular state, with no intention


Corporation Officials—

How long since you checked with your attorney the list of your company's corporate representatives in those states in which you are doing business?

Is each such representative now present, to your certain knowledge, at the address on file with the Secretary of State?

Is each such representative, to your certain knowledge, equipped with the necessary facilities for keeping informed of all state reports required from your company, dates for filing, dates for paying all property, franchise, income and other taxes in the state due from your corporation, and how to protect you against improper assessments?

Does each such representative keep your attorney promptly informed of all such matters, and all other matters affecting your corporate standing in the state?



If—

the corporate representation of your company is in the hands of The Corporation Trust Company you need have no worry about the answers to any of those questions. You can feel sure that an experienced statutory representative of your company is ALWAYS on duty; that neither vacations, removals, discharges, changes nor deaths will interrupt the continuity of your company's representation; that your company's attorney will be kept promptly informed of any and all matters requiring his attention in order to preserve the corporate standing of your company in the state.

If your company's corporate representation in any state is at present in doubtful hands, ask your attorney today about having it safely placed under the direction of The Corporation Trust Company's continent-wide organization of experts.

to repeat the same therein, or make such state a basis for the conduct of any part of its corporate business, such corporation cannot be said to be "doing business" or "transacting business" within the state, within the meaning of the usual statutory provisions regulating the transaction of business by foreign corporations. *North Dakota Realty & Inv. Co. v. Abel et al.*, 155 N. E. 46. *Frank E. Gilkison, of Shoals, for appellant. Carlos T. McCarty and Fabius Gwin, both of Shoals, for appellees.*

New York.

Foreign Corporation held to be "doing business" for service of process. The Juniata Hosiery Mills Inc., a foreign corporation, seeks to vacate the service upon its alleged managing agent on the ground that it was neither doing business in the state nor was the person served a managing agent within the meaning of the statute. The answering affidavits, show that the corporation on letters sent since the alleged resignation of Nestler its sales representative as secretary, has carried the notation "New York Office, 366 Broadway," and that the corporation is listed in the New York City telephone directory and in the directory of tenants of 366 Broadway. It also appears that no person superior in authority to Nestler is located in that office. Furthermore, on the glass panel of the door of room 905 of that address there appears the sign "Juniata Hosiery Mills, Incorporated, Mifflintown, Pa." The Supreme Court (New York County, Special Term) in passing on the above facts says that upon the state of facts thus presented there is no hesitation in saying that the corporation, for purposes of service within the jurisdiction was present here. Whatever possible explanation it may be able to furnish of its announcement on the letter heads, by which it clearly advertised its presence here to the entire world, will not be sufficient against one who may justly be assumed to have dealt with it with knowledge of these announcements, in the very office in which it transacted business through an officer armed with substantial, if not plenary, authority. *Pennrich & Co., Inc. v. Juniata Hosiery Mills, Inc.*, 220 N. Y. Supp. 667. *Maurice M. Cohn, of New York City, for plaintiff. Greene & Hurd, of New York City, for defendant.*

Foreign corporation held not "doing business." The A. Marcus Co., a foreign corporation, which was organized under the laws of Maryland and had its place of business in Baltimore, was not authorized to do business in New York, and had no place of business in the state and no property here. It made the bulk of its purchases through correspondence or by being visited by traveling salesmen employed by other concerns. Occasionally some of its officers made purchases in New York. Its name did not appear in any New York telephone book or directory. One of its officers while in New York for part of a day was served with a summons. In this connection the New York Supreme Court (Appellate Division, First Dept.) says that it was error

to deny the motion to vacate such service as the corporation was not "doing business" in the state. *Blume et al v. A. Marcus Co.*, 220 N. Y. Supp. 683. *Samuel Sturtz*, of New York City, for appellant. *Levy & Hartman*, of New York City (*Harry Hartman*, of New York City, of counsel), for respondents.

Wisconsin.

Only business transacted within state by foreign corporation comes within statute. May a foreign corporation that has not complied with the provisions of the statute make a loan outside of the state, and payable to it outside the state, to a resident of the state, and validly secure the same by a mortgage on property of the borrower located within the state? In answer to this the Supreme Court of Wisconsin says that it is only when said foreign corporation comes within the state to transact business that it must comply with the section; that the statute expressly declares valid all loans made and securities taken outside the state; that its object was not to prevent competition from without but from within. This is the clear intent of the language used. After having declared valid all loans and securities made and taken in transactions outside the state, this limitation follows: "Provided, however, that any such corporation which shall hereafter transact in this state the business above provided for shall first file," etc., showing clearly that business transacted outside the state stands upon a different basis than business transacted within the state, and that it was only business transacted within the state that came within the filing requirements. *First State Bank v. Harrington*, 212 N. W. 665. *Adams, Cromer & Clementson*, of Beloit, for appellant. *Charles J. Sumner*, of Delavan (*Simmons, Walker & Wratten*, of Racine, of counsel), for respondent.

Taxation

Arkansas.

Franchise tax on foreign corporation. In an action by the state to recover amount due as franchise taxes for certain years from a foreign corporation, it was contended by the corporation that it was not "doing business" in the state and therefore was not subject to the tax. The Supreme Court of Arkansas says that the answer to that proposition is that the tax is not based upon the doing of business in the state, but the right or privilege of doing business in the state. "We are therefore of the opinion that the tax in question was a valid exercise of the powers of the state, and was intended to be a tax on the privilege of exercising its franchise in this state, and is to be based on the proportion of the subscribed, issued, and outstanding capital stock of the corporation represented by property owned and used in business transacted in this state. It is agreed that the issued, out-

standing, and paid-up capital stock of appellee was, at all times, \$450,000, and that it was all invested in property in the state of Arkansas, and that no part of its capital was invested outside of the state of Arkansas. Therefore the appellee was liable to pay the state a franchise tax based upon this amount of capital stock. * * * If the appellee desires to avoid the payment of its franchise tax in this state, it may do so by surrendering to the state its franchise or right to do business herein, and either hold its property in its own name, or transfer it in trust to another to be held for it. But, so long as it holds its franchise and has from the state of Arkansas the right to do business herein, it is liable for the tax. Having failed to pay same within the time provided by law, it became liable to the state therefor, plus the penalty of 25 per cent. as provided in the statute, and the state has a lien upon all of its property in this state to enforce the collection of same." State ex rel, Applegate, Atty. Gen., v. Chicago Land & Timber Co., 292 S. W. 98. H. W. Applegate, Atty. Gen., and W. H. Childers and Sam M. Wassell, both of Little Rock, for appellant. Brouse & McDaniel, of Benton, for appellee.

Pennsylvania.

Capital stock tax. The last legislature of Pennsylvania passed an act, the effect of which is to exempt capital stock, invested in stock of subsidiary corporations representing property located or having a legal situs outside of Pennsylvania. This abrogates the rule applied by the courts. It was formerly held that when a domestic manufacturing corporation invests in stock of a foreign corporation, its part of that capital stock so invested was not exempt from taxation on the ground that it represented property not in the state. This rule applied even in a case where a domestic corporation owned all of the stock of a subsidiary foreign corporation the property of which was permanently located outside the state. (Commonwealth v. Sunbury Converting Works, 134 Atl. 438 (1926); Commonwealth v. J. G. Brill Co., 134 Atl. 438 (1926). See The Corporation Journal, No. 149, page 256). The decision in Commonwealth v. Sunbury Converting Works, expressly overruled the decision in Commonwealth v. Westinghouse Air Brake Co., 95 Atl. 807, which made an exception to the general rule that the situs of intangible property owned by a corporation is in the state of its origin, by holding in effect that where a corporation owning properties outside the state, organized two subsidiary corporations to operate such properties for its benefit and held all of the stock of the subsidiaries, the shares of these subsidiaries were not taxable in the hands of the parent company.

Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions from April 17 to May 17, in The Federal Tax Service of The Corporation Trust Company are briefly summarized here. The complete

reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above named Service.

The aggregate liability on account of a bonus contracted to be paid by an investment company to the purchaser of a note taken by it on account of a loan secured by real estate mortgage, such bonus being equal to one per centum per annum to the maturity of the note sold on the amount thereof, is deductible in its entirety as an expense of the year the note is sold, the company's books of account being on the accrual basis. Revenue Act of 1916-1917. United States Supreme Court decision (Part 1, ¶4166). . . . Depreciation since the basic date is to be given weight in determining the amount of gain on the sale of depreciable property. Premiums paid by the insured on straight life insurance payable to his estate are not deductible by him as a business expense though assigned to bank as collateral security for money borrowed to be used in business. Revenue Acts of 1918 and 1921. United States District Court decision, Western District of Pennsylvania (Part 1, ¶4209). . . . The failure of a petitioner on originally filing his petition with the Board of Tax Appeals within the statutory 60-day period to accompany his petition with the \$10.00 filing fee required by the Board's rule, such filing fee being later tendered with his petition which had been returned to him by the Board, the 60-day period having then expired, does not warrant a dismissal by the Board of the petition on the ground that it was not seasonally filed. Revenue Act of 1926. United States Circuit Court of Appeals decision, Third Circuit (Part 1, ¶4224). . . .

The provisions of Section 280 of the 1926 Act relative to the liability of the transferees of the property of a taxpayer on account of the latter's taxes are held to be unconstitutional, and, when steps are taken under color of such section to enforce the alleged liability, injunctive relief will be granted, Section 3224 of the Revised Statutes being without application in such a case. United States District Court decision, Western District of Kentucky (Part 1, ¶4280). . . . The income of a trust which was to be used to the extent deemed necessary by the trustees in their discretion for the proper education and support of minor beneficiaries (and was so used), the remainder to be held and reinvested for their benefit, is deemed to have been distributed, and accumulated as by a guardian, and so, taxable to the beneficiaries rather than to the trust. Revenue Acts 1916-1917, 1918 and 1921. United States Circuit Court of Appeals decision, Eighth Circuit (Part 1, ¶4297). . . . Suit against the stock-holder transferees of a taxpayer liquidated corporation's assets for additional tax assessed against the then dissolved corporation within five years after the return was filed, such suit having been brought within six years after the return was filed, both after the passage of the Revenue Act of 1924, and while that Act was in effect, is not barred by the statute of limitations. United States Circuit Court of Appeals decision, Fifth Circuit (Part 1, ¶4311). . . .

Generally, on the sale of depletable and depreciable property, and specifically on the sale of "oil rights" and the equipment used in connection with the exercise thereof, the aggregate amounts, respectively, on account of the depletion and depreciation of such properties to which the vendor was entitled as deductions since the respective basic dates, whether claimed or not year by year, are to be taken into consideration in fixing the basis to be used in determining the gain or loss resulting from such sale. Revenue Act of 1916-1917. United States Supreme Court decision (Part 1, ¶4313). . . . The amount of the investment in property (or in share-stock represented thereby) seized and sequestered by Germany during the war is deductible as loss for the year of the seizure and seques-

tration. Revenue Act of 1918. United States Supreme Court decision (Part 1, ¶4325). . . . Income from illegal transactions is taxable income and, if a taxpayer's income from such and other sources is sufficiently large to require him to make a return, he is not relieved of his obligation to make return because of the privilege against self incrimination afforded by the Fifth Amendment of the Constitution whatever may be his rights thereunder (and this the court does not decide) in connection with the answers called for by any particular interrogatories on the return form, and so a conviction under an indictment charging wilful refusal to make return under such circumstances is sustained. Revenue Act of 1921. United States Supreme Court decision (Part 1, ¶4337). . . .

Notes

Subscribers to this company's newly established Corporation Tax Service, State and Local, have recently been receiving quick reports on some very important new matters, among them being amendments to the franchise tax laws, affecting both foreign and domestic corporations, of Ohio, Illinois and California.

In Ohio both the basis of the tax and the rate have been changed. The first annual report under the amended law is due within thirty days of the date the amendments took effect, which was May 12, 1927.

In Illinois there is no change in rate but it is now based on the issued, instead of on the authorized, capital stock, and shares of no par value are to be taken, for purposes

of this tax, at the amount of the value received, or to be received, instead of at the arbitrary value of \$100 per share. All subsequent issues of capital stock must be reported within thirty days from date of issuance.

In California the rate of tax, based on the value of the corporate franchise, has been increased in order to make up the loss of revenue resulting from repeal of the old law which was held unconstitutional as applied to foreign corporations.

Full particulars of these changes, as well as others, are covered in The Corporation Tax Service, State and Local.

The Chesapeake Corporation was organized under the laws of Maryland last month, the

details of incorporation in that state being handled for counsel by The Corporation Trust Company. According to the press the new company has been formed by the Van Sweringen interests for the purpose of acquiring the controlling stock of the Chesapeake and Ohio Railroad, heretofore held by these interests with the New York, Chicago and St. Louis Railroad, and The Vaness Company. The capitalization is 900,000 shares of no par value.

While on business in an up-state New York city recently a representative of The Corporation Trust Company found a firm of attorneys at what they thought was an impasse. The business affairs of a large client had called for the rapid organization of a subsidiary New York corporation, to be qualified in twelve different states, and the qualifications had to be completed before May 1. The certificate of incorporation had been mailed to the Secretary of State at Albany with an order for twelve certified copies. On the day when the attorneys had figured on having the certified copies for proceeding with the work of qualification they received instead a notice that they had miscalculated the fees for

filing the certificate and no action could be taken by the Secretary of State until the shortage had been covered. The qualification papers would have to be started on their way by the next day at the latest. That was the situation laid before The Corporation Trust Company's representative when he chanced into the office, and, "Is there any way out?" was the question put to him. He noted the details and telephoned them to this company's agent at Albany. The latter, by personal investigation, ascertained the amount of the shortage, paid it on the spot, got the twelve certified copies and had them off by special messenger, so they were delivered to the attorneys the next morning, saving the day. Thus are such situations frequently remedied by the Albany facilities of The Corporation Trust Company. They never have the chance to arise, though, if the filing of the papers is entrusted to this company in the first place.

463 corporations were organized under the laws of Delaware from April 20 to May 20, as against 475 for the preceding 30-day period, and 441 for the corresponding period of one year ago.

Some Important Matters for June, July, August, September, and October

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

ALASKA—Annual licenses on certain occupations due on or before November 1—Domestic and Foreign Corporations.

- ARIZONA—Report to Corporation Commission and Registration Fee due during June—Domestic and Foreign Corporations.
- ARKANSAS—Anti-Trust Affidavit due on or before August 1—Domestic and Foreign Corporations.
Annual Franchise Tax due on or before August 10—Domestic and Foreign Corporations.
- CALIFORNIA—Corporation Franchise Tax due on first Monday in July—Domestic and Foreign Corporations.
- CONNECTICUT—Income Tax due on or before September 1—Domestic and Foreign Corporations.
Annual Report due on or before August 15—Domestic and Foreign Corporations.
- DELAWARE—Annual Franchise Tax due between April 1 and July 1—Domestic Corporations.
- GEORGIA—Certified Statement for Registration due on or before November 1—Domestic and Foreign Corporations.
- IDAHO—Annual Statement due between July 1 and September 1—Domestic and Foreign Corporations.
Annual License Tax due between July 1 and September 1—Domestic and Foreign Corporations.
- ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 31 without penalty—Domestic and Foreign Corporations.
- INDIANA—Annual Report between June 1 and July 31—Domestic Corporations.
- IOWA—Annual Report due between the first day of July and the first day of August—Domestic and Foreign Corporations.
Additional statement due at the time of making the Annual Report in July—Foreign Corporations.
- MAINE—Annual Franchise Tax due on or before September 1—Domestic Corporations.
- MARYLAND—Franchise Tax due on or before September 1—Domestic Business Corporations.
- MICHIGAN—Annual Report due during July or August—Domestic and Foreign Corporations.
- MISSISSIPPI—Annual Report to factory inspector due during July—Domestic and Foreign Corporations.
Income Tax due on or before June 15—Foreign Corporations.
- MISSOURI—Annual Statement, Registration and Anti-Trust Affidavit due during July—Domestic and Foreign Corporations.
- MONTANA—Annual License Tax based on Net Income due between June 1 and June 15—Domestic and Foreign Corporations.
- NEBRASKA—Annual Report and Fee during July—Foreign Corporations.
Annual Statement due on or before September 15—Foreign Corporation.
Annual Report and Fee due on or before July 1—Domestic Corporations.
- NEVADA—Annual List of Officers due on or before July 1—Domestic and Foreign Corporations.

NEW JERSEY—Franchise Tax due on or before first Monday in August—Domestic Corporations.

NEW MEXICO—Annual Franchise Tax Report due on or before September 1—Domestic and Foreign Corporations.

Annual Franchise Tax due on or before November 30—Domestic and Foreign Corporations.

NEW YORK—Annual Return of Net Income on or before July 1—Domestic and Foreign Business Corporations.

Supplementary franchise tax return due on or before November 30—Domestic and Foreign Corporations organized or qualified between June 30 and November 1 of current year.

NORTH CAROLINA—Capital Stock Report to determine amount of Franchise Tax due on or before July 1—Domestic and Foreign Corporations.

Annual Franchise tax due on or before October 1—Domestic and Foreign Corporations.

NORTH DAKOTA—Corporation Report due during July—Domestic and Foreign Corporations.

OKLAHOMA—Annual License Tax Report due on or before July 31—Domestic and Foreign Corporations.

Annual Capital Stock Affidavit due between July 1 and August 1 Foreign Corporations.

OREGON—Annual License Fee due within 30 days after July 15—Domestic Corporations.

License Fee due between July 1 and August 15—Foreign Corporations.

Annual Statement due during June—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before first day of July—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1—Domestic and Foreign Corporations.

UNITED STATES—Second Installment Income Tax imposed for the calendar year 1926 due June 15. Third Installment of Income Tax due on or before September 15—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

UTAH—Corporation License Tax due between November 15 and December 15—Domestic and Foreign Corporations.

WASHINGTON—License Tax on or before July 1—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax Statement due on or before July 1—Domestic Corporations.

Annual License Tax due on or before July 1—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before June 30—Foreign and Non-Resident Domestic Corporations.

WYOMING—Annual Sworn Statement and License Tax due on or before July 1—Domestic and Foreign Corporations.

The Corporation Trust Company's Supplementary Literature

In connection with the various departments of its business The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:

- Analysis of Recent Amendments to Delaware Corporation Laws.** Complete text of these important new features together with explanation of their effect.
- What Constitutes Doing Business.** A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business."
- Six Points to Watch in Incorporation.** A valuable reminder for attorneys when planning a corporate structure or drafting incorporation papers.
- Two Notable Certificates of Incorporation.** Certificate of Standard Oil Company of California, and that of Tide Water Associated Oil Company.
- Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books.
- Delaware Corporations.**—Presents in convenient form a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non par value stock, and a brief summary of the statutory requirements, procedure and costs of incorporation.
- Shares Without Par Value.** Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.
- Paying Too Much in Taxes.** Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary.
- When You Want to be Right About Any Federal Tax Question.** A 16-page pamphlet explaining how to find the complete information about any Federal tax question by means of The Federal Tax Service of The Corporation Trust Company.
- When Doing Business Is Illegal.** A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business.
- Revenue Act of 1926.** A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.
- Amendments to New Jersey Corporation Laws.** Full text of the ten amendments passed at the legislative session of 1927.
- Transfer Requirements Chart.** This supplement to The Stock Transfer Guide and Service shows the classifications into which requests for stock transfers are divided and how the principal requirements for each classification may be determined, either by the transfer agent or the individual desiring transfer made.
- Lawyers' Preliminary Work Sheets.** Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference.

Another Taxation Tangle Straightened Out

What The Corporation Trust Company did in The Federal Tax Service to give instant access to all the official information regarding the Income and other Federal taxes, it has now done for state and local taxes on corporations through The Corporation Tax Service, State and Local. This newest of The Corporation Trust Company's services covers every state and local tax payable by ordinary business corporations, in every state. It is kept constantly up to date. Each subscriber may select the states, and in each state the particular city, which he desires the Service to cover for him and the subscription price is based on the number so selected. Write today for complete information.

For each State—

Franchise or License
Taxes

Income Taxes

General Property Taxes
—and any other taxes,
state or local, applying
to ordinary business cor-
porations.

and for each Tax—

Of what corporations re-
quired, exemptions, basis
of tax rate, when to be
paid and to whom, how
to obtain extensions, how
and where to appeal
from the assessing official
or body, reports required
and where and when to
be filed, and all the ap-
plicable official opinions,
rulings, definitions and
court decisions, and text
of all law sections gov-
erning.

THE CORPORATION TRUST COMPANY

120 Broadway, New York

Affiliated with

The Corporation Trust Company System

15 Exchange Place, Jersey City

Combined Assets a Million Dollars

Chicago, 112 W. Adams Street
Pittsburgh, Oliver Bldg.
Washington, Colorado Bldg.
Los Angeles, Security Bldg.
Cleveland, Union Trust Bldg.
Kansas City, Scarritt Bldg.
San Francisco, Mills Bldg.
Portland, Me., 281 St. John St.

Philadelphia, Land Title Bldg.
Boston, 53 State Street
(Corporation Registration Co.)
St. Louis, Fed. Com. Trust Bldg.
Detroit, Dime Sav. Bank Bldg.
Minneapolis, Security Bldg.
Albany Agency, 25 Washington Ave.
Buffalo Agency, Ellicott Sq. Bldg.

WILMINGTON, DELAWARE
(The Corporation Trust Co. of America)

Corporations represented in a corporate capacity by The Corporation Trust Company, in Delaware or elsewhere, find that to have this company acting also as Transfer Agent or Registrar is highly efficient and satisfactory. It not only assures that friendly co-operation between Transfer Agent and Corporate Agent which is so essential to the company's corporate safety, but concentrates the responsibility for such co-operation in one organization. It means that the same institution responsible for compliance with the statutes regarding the keeping of duplicate stock records where required in the state of incorporation, is responsible for reporting all changes in those records promptly. Also the good understanding already established, through our corporate services, with the company's counsel assures a close co-operation between counsel and Transfer Agent that is always to the company's advantage.

